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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,503	02/07/2006	Enea Garagnani	MI 6125 (US)	8964
34872	7590	01/21/2009		
Basell USA Inc. Delaware Corporate Center II 2 Righter Parkway, Suite #300 Wilmington, DE 19803			EXAMINER CHOI, LING SIU	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			01/21/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/567,503

Applicant(s)

GARAGNANI ET AL.

Examiner

Ling-Siu Choi

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 9, 11, 13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 9, 11, 13 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The request filed on 11/07/2008 for a Request for Continued examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/567,503 is acceptable and a RCE has been established. An action on the RCE follows.
2. This Office Action is in response to the Amendment filed 11/07/2008. Claims 1-7, 10, 12, 14 were cancelled and claims 15-22 have been added. Claims 8-9, 11, 13, and 15-22 are now pending.

Claim Rejections - 35 USC § 112

3. **The following is a quotation of the first paragraph of 35 U.S.C. 112:**

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 17-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In view of the Specification (page 3, lines 2-7) "The olefin polymer rubber of component (B) used in the polyolefin composition of the present invention can be a poly(ethylene-co-C₃-C₁₀ α -olefin) or poly(ethylene-co-propylene-co-C₄-C₁₀ α -olefin) having an ethylene content preferably from 65 to 80 % by weight", there is no support for "more than 70% by weight of ethylene" cited in lines 8-9 of claim 17.

Claim Analysis

5. Summary of Claim 8:

A polyolefin composition <u>comprising</u>		
A	60-85 wt%	a broad molecular weight distribution propylene polymer having a polydispersity index = 5 -15 a melt flow rate =20-78 g /10 min [ASTM-D 1238, condition L]
B	15-40 wt%	a partially xylene soluble olefin polymer rubber comprising <u>at least 65 wt% of ethylene</u>
wherein the polyolefin composition comprises a melt flow rate of from 5 to 20 g/10 min		

Summary of Claim 17:

A polyolefin composition <u>comprising</u>		
A	60-85 wt%	a broad molecular weight distribution propylene polymer having a polydispersity index = 5 -15 a melt flow rate =20-78 g /10 min [ASTM-D 1238, condition L]
B	15-40 wt%	a partially xylene soluble olefin polymer rubber comprising <u>more than 70 wt% of ethylene</u>
wherein the polyolefin composition comprises a melt flow rate of from 5 to 20 g/10 min		

Claim Rejections - 35 USC § 102

6. **The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

7. Claims 8-9, 11, 13, and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by DeNicola, Jr. et al. (US 5,286,791).

DeNicola, Jr. et al. disclose an impact-modified graft copolymer composition to be used in an inject molding to make an article, comprising (A) 10-90 wt% of graft copolymer, (B) 90-10 wt% of at least one propylene polymer having a wide molecular weight distribution, and (C) 2-40 wt% of at least one rubber component, wherein the component B has a molecular weight distribution of 8-60 and a melt flow rate of 0.5-50 g/10 min; the component C can be an ethylene-propylene copolymer rubber having 30-70% ethylene content (abstract; col. 4, lines 25-31; col. 7, lines 33, 46-48, and 62-63; Examples 1-5-especially line 9; claims 1 and 4). DeNicola, Jr. also disclose that the composition further comprises about 10-100 pph of a filler which can be talc, a calcium carbonate, and silicate (col. 3, lines 25-32; col. 10, lines 36-43). It is noted that the ethylene-propylene copolymer rubber reads on the partially xylene soluble olefin polymer rubber. Thus, the present claims are anticipated by the disclosure of DeNicola et al.

Allowable Subject Matter

8. Claims 17-22 are allowable over the closest references: DeNicola, Jr. et al. (US 5,286,791).

DeNicola, Jr. et al. disclose an impact-modified graft copolymer composition to be used in an inject molding to make an article, comprising (A) 10-90 wt% of graft copolymer, (B) 90-10 wt% of at least one propylene polymer having a wide molecular weight distribution, and (C) 2-40 wt% of at least one rubber component, wherein the component B has a molecular weight distribution of 8-60 and a melt flow rate of 0.5-50 g/10 min; the component C can be an ethylene-propylene copolymer rubber having 30-70% ethylene content [The base for the percentage is not defined. However, either weight% or mole% is at most 70%] (abstract; col. 4, lines 25-31; col. 7, lines 33, 46-48, and 62-63; Examples 1-5-especially line 9; claims 1 and 4). DeNicola, Jr. also disclose that the composition further comprises about 10-100 pph of a filler which can be talc, a calcium carbonate, and silicate (col. 3, lines 25-32; col. 10, lines 36-43). It is noted that the ethylene-propylene copolymer rubber reads on the partially xylene soluble olefin polymer rubber. Thus, DeNicola et al. do not teach or fairly suggest the claimed polyolefin composition, wherein the composition comprises, in particular, the olefin polymer rubber containing more than 70 wt% of ethylene.

Response to Arguments

9. Applicant's arguments filed 11/07/2008 have been fully considered but they are not persuasive.

The response has been addressed above. Furthermore, the response to the claims 8-9, 11, 13, and 15-16 has been presented in the Advisor's Action and is repeated here: DeNicola, Jr. disclose that the component (B) has a melt flow rate of 0.5-50 g/10 min and the amount of the component (B) can be up to 90 wt%. As such, the composition would have melt flow rate around 0.5-50 g/10 min.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ling-Siu Choi whose telephone number is 571-272-1098.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on 571-272-1114.

/Ling-Siu Choi/

Primary Examiner, Art Unit 1796

January 20, 2009

Application/Control Number: 10/567,503
Art Unit: 1796

Page 7